

**CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION**

Emergency Action to Amend Section 120.3, Title 14, California Code of Regulations Re: Spot Prawn Trawling

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Bocaccio, cowcod and darkblotched rockfish are among the rockfish species that have been declared overfished by the National Marine Fisheries Service (NMFS). Rebuilding plans have been developed by the Pacific Fishery Management Council (Council) for these species as required under the Magnuson-Stevens Fisheries Conservation and Management Act. For 2002, the total optimum yield (OY) to achieve rebuilding for bocaccio was set at 100 metric tons (mt) for recreational and commercial fisheries combined. The commercial portion of the catch was 44 mt. The recreational fishery exceeded its OY of 56 mt at the end of April, and the commercial landings through June 8 were about 21 mt, approximately half of the commercial allocation. Projected landings were expected to meet or exceed the total OY of 100 mt by the end of June. As a result, at its June 2002 meeting the Council recommended closing or restructuring fisheries that incidentally take bocaccio starting July 1, 2002. In addition, the Council adopted a proposed total OY for bocaccio in 2003 ranging from 0 to 5.8 mt. In 2002, the total OY for cowcod was 4.8 mt divided equally south and north of Pt. Conception. The same allocation for cowcod is expected in 2003. The OY for darkblotched rockfish was 168 mt in 2002, and commercial trawl landings of darkblotched are expected to meet or exceed this OY by the end of the year. The 2003 OY for darkblotched rockfish is expected to be in the range of 76 to 160 mt.

On July 1, 2002 a NMFS prohibition on the retention of all groundfish species taken in state trawl fisheries went into effect. Also effective July 1, 2002 until the end of the calendar year, both recreational and commercial fishing for lingcod and specified rockfishes were confined to waters less than 20 fathoms in depth. The Council and the Department took this action to halt fishing for shelf rockfish and associated species south of Cape Mendocino (40° 10' - Humboldt County).

At the August 2, 2002 Fish and Game Commission (Commission) meeting, the Department presented highlights from its report, "Results of California Department of Fish and Game Spot Prawn Trawl and Trap Fisheries Bycatch Observer Program 2000-2001". The total estimated bycatch of bocaccio in the spot prawn trawl fishery for the one-year period of observations was approximately 5 short tons (tons) and for cowcod it was approximately 1.2 tons. These estimates of bycatch in the spot prawn trawl fishery are significant now and will be into the future given the OYs that are being considered in 2003 for bocaccio rebuilding. The bycatch of these species in the spot prawn trap fishery was not significant. The estimated bycatch of 6.5 tons of darkblotched rockfish from the spot prawn trawl fishery was not deemed significant at this time, but not much is known about the stock of this deepwater rockfish.

The federal groundfish management plan provides the framework for management by the Council of 82 species of groundfish (primarily rockfishes) along the Pacific coast. The NMFS is charged with establishing federal regulations governing fishing activities for these species, including rules on take and possession for vessels employing varied gear types. However, the federal regulations stop short of regulating other fishing activities which may have an interaction with groundfish. Specifically, in the case of the spot prawn trawl fishery, there is a known interaction with groundfish species inhabiting the continental shelf, including documented incidental take of species that are declared overfished. Although Council regulations can prevent the *retention* of these species in the spot prawn trawl fishery through their own regulations, emergency action would be required by the Commission to prevent the trawl fishery from continuing to operate status quo in its efforts to target spot prawns, since take of overfished rockfish species is confirmed.

For 2003, the Council has proposed a fishing regulation to be implemented January 1 that would preclude all fishing for the 82 groundfish species on most of the continental shelf south of Cape Mendocino to protect bocaccio. Closing the entire continental shelf to groundfish fishing south of Cape Mendocino to the U.S.-Mexico border for the entire year is a management action that is unprecedented in west coast groundfish fishery management. Given the seriousness of this management action, and the degree of protection necessary to rebuild these overfished resources, allowing any fishing activity with a known degree of significant impact to these overfished stocks would be contrary to the intent of the federal regulations and the goals of the groundfish fishery management plan.

Similarly, because of the concerns for darkblotched rockfish, a major commercial fishing closure is expected to be implemented off California north of Cape Mendocino through Oregon and Washington starting September 1, 2002. Fishery scientists are predicting that the recovery period for bocaccio and other overfished rockfishes could take decades. The rebuilding requirements for bocaccio and cowcod result in allowable catch levels that cannot support current directed fisheries for those species, let alone bycatch in other fisheries.

The proposed emergency regulatory action is to either prohibit trawl fishing for spot prawn entirely or restrict it to waters 150 fathoms or deeper south of Point Reyes and 250 fathoms or deeper north of Point Reyes. These regulations do not apply to the existing trap fishery for spot prawn. The Department's bycatch observer report estimated a bycatch of approximately 570 pounds of bocaccio, approximately 370 pounds of cowcod, and no take of darkblotched rockfish in the spot prawn trap fishery over a 1-year period.

A number of the spot prawn trawl vessels also participate, or have participated in the past, in trawl fisheries for pink shrimp, California halibut, ridgeback prawn, and sea cucumber (the other state-managed trawl fisheries). Although sea cucumber and pink shrimp are restricted access fisheries, the other two fisheries are open access. It is anticipated that a number of the affected spot prawn vessels would resume participation or participate more actively in these other

fisheries if a prohibition on spot prawn trawling went into effect. Increased participation in the other state-managed trawl fisheries would likely cause decreased success in the remaining trawl fisheries, since they are fully exploited. The Legislature designated the following area as the California halibut trawl grounds: the ocean waters lying between one and three nautical miles from the mainland shore between Point Arguello and Point Mugu. Halibut trawling is concentrated in this area, and more vessels on the grounds will likely have a detrimental effect on the fishing area itself.

The open season for spot prawn trawling ends on October 31, 2002, and will reopen February 1, 2003. During September and October 2002, the Department estimates that the total incidental take (bycatch) of bocaccio would be in the range of 1 to 1.4 tons, based on results of the bycatch study and on seasonal catch and effort trends for spot prawn trawl fishing. As noted earlier, the commercial sector had only landed just under half of their bocaccio allocation by June 8, 2002. An additional 1 to 1.4 tons of bocaccio bycatch would not cause the commercial fisheries to reach their allocation for 2002. However, the combined allocation of bocaccio for all recreational and commercial fisheries in 2002 has been exceeded. The remaining spawning biomass of bocaccio currently stands at less than 5 percent of its unfished biomass. At such a low level of abundance even relatively small additional impacts on the stock could have long-term consequences.

II. Alternatives

The Commission has determined that no alternative considered would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Economic Impact of Proposed Regulatory Action:

The Commission has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and has made the following determinations relative to the required statutory categories:

(a) Significant Adverse Economic Impact on Businesses:
Each spot prawn trawler or buyer is considered a business. Spot prawn is landed either live or dead, but the live product demands a much greater price and is the preferred method of landing. In 2000 and 2001, 39 and 43 trawl vessels, respectively, landed spot prawn in California. Of those vessels, 22 and 21, respectively, landed more than 1,000 pounds of spot prawn at an average price of \$7.00/ pound (live). The estimated ex-vessel value of the spot prawn trawl fishery was \$1.4 million in 2001. The estimated loss to the fishery participants from a September-October closure alone would be \$0.4 million based on the ex-vessel value of spot prawn and seasonal trends in catch and effort. In addition to losses incurred by fishermen due to their inability to provide their product, California buyers, processors and consumers will suffer additional losses which are not easily quantified.

In recent years, a number of these vessels have also participated in trawl fisheries for pink shrimp, California halibut, ridgeback prawn, and sea cucumber (the other state-managed trawl fisheries). Although pink shrimp and sea cucumber are restricted access fisheries, the other two are open access. It is anticipated that a number of the affected spot prawn vessels would resume participation or participate more actively in these other fisheries if a prohibition on trawling went into effect. Increased participation in the other state-managed trawl fisheries would likely have a negative impact of unknown degree on the halibut and ridgeback prawn trawl fisheries, and to a lesser degree pink shrimp and sea cucumbers. These fisheries are already fully exploited and additional effort will cause decreased success in the remaining trawl fisheries.

As opposed to a complete prohibition on spot prawn trawl activity, a depth closure would allow the larger trawl vessels (approximately 50 feet in length or greater), the ones that usually make the largest landings, to continue to operate, although on a limited basis. Results from the bycatch observer study showed that approximately 90 percent of all observed trawl tows occurred in water less than 150 fm deep. Small trawl vessels can not operate beyond the depth closure because of size, power and stability limitations.

- (b) Economic Impact on Private Persons: None.
- (c) Adversely Impact the Ability of California Businesses to Compete with Businesses in Other States: None.
- (d) Impact the Creation or Elimination of Jobs or Businesses or the Expansion of Businesses in California: None.
- (e) Fiscal Impact on Public Agencies, Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (f) Involve Nondiscretionary Costs/Savings to Local Agencies: None.
- (g) Mandate Programs on Local Agencies or School Districts: None.
- (h) Impose Costs to Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (i) Affect Housing Costs: None.

IV. Plain English Policy Statement:

It has been determined that the adoption/amendment of these regulations will affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Section 240 of the Fish and Game Code and to implement, interpret, or make specific Section 240 of said Code.

VI. Section 240 Finding:

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Informative Digest (Plain English Overview)

Bocaccio, cowcod, and darkblotched rockfish have been declared overfished by the National Marine Fisheries Service, and rebuilding plans have been developed by the Pacific Fishery Management Council. The optimum yield (OY) for bocaccio off California (recreational and commercial combined) in 2003 is proposed to range from 0 to 5.8 metric tons (mt). The 2003 statewide allocation for cowcod is expected to remain at 4.8 mt, and for darkblotched a range of 76-160 mt is proposed. The Department's report, "Results of California Department of Fish and Game Spot Prawn Trawl and Trap Fisheries Bycatch Observer Program 2000-2001", estimated a bycatch of 5 short tons (tons) of bocaccio, 1.2 tons of cowcod, and 6.5 tons of darkblotched rockfish in a one-year period for the spot prawn trawl fishery. The estimated bycatch of these species in the spot prawn trap fishery was not significant.

Existing law provides for the use of trawl nets in the commercial spot prawn fishery from February 1 through October 31.

The Commission is proposing a complete prohibition on the use of trawl gear to take spot prawn to greatly reduce or eliminate the bycatch of darkblotched rockfish, bocaccio and cowcod.